

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>MARTHA KITCHEN</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 228,213
<b>LUCE PRESS CLIPPINGS</b>	)	
Respondent	)	
AND	)	
	)	
<b>AIG AMERICAN HOME ASSURANCE</b>	)	
Insurance Carrier	)	

**ORDER**

Claimant appeals from an Award entered by Administrative Law Judge Brad E. Avery. The Appeals Board heard oral argument October 18, 2000.

**APPEARANCES**

Roger D. Fincher of Topeka, Kansas, appeared on behalf of claimant. Matthew S. Crowley of Topeka, Kansas, appeared on behalf of respondent and its insurance carrier.

**RECORD AND STIPULATIONS**

The Appeals Board has considered the record and adopted the stipulations listed in the Award.

**ISSUES**

The Administrative Law Judge found claimant has failed to prove that her injury arose out of and in the course of her employment with respondent. Claimant contends the injury arose out of her employment and that she has a 10 percent permanent partial disability from the physical injury and a 60 percent permanent partial disability from resulting psychological problems.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record and considering the arguments, the Appeals Board concludes the Award should be affirmed.

### Findings of Fact

1. On the morning of June 23, 1997, claimant woke up with numbness in her right thumb. Claimant had not worked the preceding day. The numbness spread to almost the entire hand and claimant sought medical care. After seeing the nurse practitioner for her family physician, claimant was referred to Dr. Samir Desai. Dr. Desai ordered x-rays, an MRI of the cervical spine, and nerve conduction tests. The x-rays and nerve conduction tests were normal, but the MRI showed a slight bulge in one disc.

2. Because of the bulging disc, Dr. Desai referred claimant to Dr. K. N. Arjunan, a neurosurgeon. Claimant saw Dr. Arjunan on August 18, 1997. Dr. Arjunan found no evidence of carpal tunnel syndrome or any cervical radiculopathy. Dr. Arjunan stated that the symptoms were not related to the bulging disc, but he also recommended claimant see a neurologist. He thought the symptoms might be explained by a small infarct and recommended an MRI scan of the head.

3. Claimant saw Dr. Sharon L. McKinney, a physiatrist, in September 1997 and again in November 1997. Dr. McKinney did not testify, but claimant has testified without objection that Dr. McKinney diagnosed a work-related thoracic outlet syndrome.

4. Two physicians testified regarding the nature and extent of claimant's physical injury and disability, Dr. Deborah T. Mowery and Dr. Lynn D. Ketchum. Dr. Mowery first saw claimant in February 1998. Dr. Mowery performed thoracic outlet maneuvers and the results were normal. Dr. Mowery also thought a stroke may be the cause of claimant's complaints and recommended further testing. Dr. Mowery testified she reviewed Dr. Chris D. Fevurly's report stating that he did not believe claimant has thoracic outlet syndrome. Dr. Mowery saw claimant again in October 1998. She concluded claimant has no work-related injury.

5. Dr. Ketchum saw claimant in May 1998 and again in May 1999. He diagnosed thoracic outlet syndrome that he attributed to a slumped posture, a posture claimant assumed while performing her work for respondent. But Dr. Ketchum ultimately acknowledges that his diagnosis is speculative. He recommends further exercises or testing to confirm the diagnosis.

6. The record also includes the report from Dr. Neal D. Lintecum. Dr. Lintecum examined claimant at the request of the ALJ. Dr. Lintecum's report of March 24, 1999, indicates his findings are not consistent with thoracic outlet syndrome. He is unable to make any specific diagnosis but concludes the symptoms are not work related. He also opines that further workup may be helpful.

7. In addition to the testimony about a physical injury, the parties introduced evidence relating to a psychological injury. Dr. Jeanne Frieman diagnosed depression related to a hand injury. She rated claimant's impairment as 60 percent of the whole person. Dr. Roy B. Lacoursiere, a psychiatrist, testified that claimant has a conversion disorder. He also opines that claimant does not have thoracic outlet syndrome or other physical injury from her work. According to Dr. Lacoursiere, the conversion is from stress to a physical symptom.

**Conclusions of Law**

1. Claimant has the burden of proving her right to an award of compensation and of proving the various conditions on which that right depends. K.S.A. 44-501(a).
2. The Board concludes claimant has not met her burden of proving a physical injury caused by her work for respondent. In this record the only diagnosis considered work related is the diagnosis of thoracic outlet syndrome. Dr. Ketchum and Dr. McKinney both assign this diagnosis. But Dr. McKinney did not testify, and Dr. Ketchum acknowledges that he is speculating. He would need further testing to confirm the diagnosis. Dr. Mowery had earlier ruled out thoracic outlet syndrome using the same testing that Dr. Ketchum did approximately a year later. Based on the record as a whole, the Board concludes the evidence does not establish claimant has thoracic outlet syndrome. The evidence also does not prove any other work-related physical injury. Claimant's alleged psychological injury cannot be considered compensable in the first instance unless traceable to a compensable injury. *Boutwell v. Domino's Pizza*, 25 Kan. App. 2d 110, 959 P.2d 469, rev. denied \_\_ Kan. \_\_ (1998).

**AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Brad E. Avery on May 23, 2000, should be, and the same is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of November 2000.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Roger D. Fincher, Topeka, KS  
Matthew S. Crowley, Topeka, KS  
Brad E. Avery, Administrative Law Judge  
Philip S. Harness, Director